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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/628,692	07/28/2000	W. Olin Sibert	7451.0025-00	3388
22852	7590	12/04/2006	EXAMINER	
FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER LLP 901 NEW YORK AVENUE, NW WASHINGTON, DC 20001-4413			COLIN, CARL G	
			ART UNIT	PAPER NUMBER
			2136	

DATE MAILED: 12/04/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

09/628,692

Applicant(s)

SIBERT, W. OLIN

Examiner

Carl Colin

Art Unit

2136

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 07 November 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 7-13 and 28-47.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER


11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

Continuation of 11. does NOT place the application in condition for allowance because: Applicant's arguments in the response filed on 11/7/06 are not persuasive. Applicant states on page 10, "Benson's keyfile is a file that contains the customer's public key along with thousand of decoy bits and further states that Benson does not teach including any code in the key file. This statement is in contradiction to the meaning of code because even the public key itself in the keyfile may be interpreted as code. The claim merely recites "the predetermined portion of the application including at least some code". Therefore applicant has not overcome the rejection of claim 7. Applicant adds "the Examiner's assertion that Benson's keyfile contains the software code to perform services is incorrect." Again the claim does not explicitly recite software code or application's actual code as mentioned previously in the final rejection on page 2. In addition, the keyfile is executable by the computer which also implies that the keyfile includes some code. Also it appears that the "code" in the predetermined portion that applicant argues about is a non-functional element and does not make any meaningful contribution to the claimed invention. It is noted that any data, component, information, or key related to the application may be interpreted as portion of the application as Applicant's specification describes (page 31, line 28-page 32, line 6) application portion as the following: "As shown in Figure 16A, application 600 may include different components. For example application 600 may include one or more read-only application components such as executable component 601 (1), library component 601 (2), and/or other read-only component 31 601(N). Application program 600 may also include one or more modifiable (read-write) components 603(1) ,603(N). The modifiable components 603 are typically not certified because of their modifiability; however, it may be desirable to certify any or all of the read-only components 601 irrespective of whether they are executable code, data, or a combination or hybrid. The credential 612 created by credential generating process 610 can provide verification information corresponding to each o f these read-only components 601 (1) 601 (N)."

The specification further describes, "in this Figure 17 example, the verifying authority 100 performs a selection process to select a portion of application 600 - for example, a random byte range, virtual path, or other subset of the information contained in the application component being certified (Figure 17, block 700)."

Regarding claims 28, 35, and 42, applicant argues that Benson does not disclose "a challenge requesting the application or agent to provide one or more portions of the application" Examiner respectfully disagrees. Benson compares hash value received by explicitly disclosing: column 13, lines 35-40 "The challenge means calculates $h(k, r, \text{sub.B}, B)$ and compares the result (for equality) against the corresponding value received in Step (2). If the equality check succeeds, then the challenge mechanism accepts the proof, otherwise, the challenge mechanism rejects the proof." In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). Therefore, Application has not overcome the rejection of claims 28, 35, and 42. For at least the reasons cited above and in the final rejection, the request for reconsideration has been considered but does not place the application in condition for allowance.

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11/27/06